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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,431	12/27/2001	Steve J. McKinnon	7000-062	1726

27820 7590 08/23/2007

WITHROW & TERRANOVA, P.L.L.C.
100 REGENCY FOREST DRIVE
SUITE 160
CARY, NC 27518

EXAMINER	
HOSSAIN, TANIM M	

ART UNIT	PAPER NUMBER
2145	

MAIL DATE	DELIVERY MODE
08/23/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10034431	12/27/01	MCKINNON ET AL.	7000-062

WITHROW & TERRANOVA, P.L.L.C.
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EXAMINER
Tanim Hossain

ART UNIT	PAPER
2145	20070816

DATE MAILED:

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Commissioner for Patents

The IDS filed on February 10, 2004; March 4, 2004; June 8, 2004; September 21, 2004; and February 14, 2005 have been considered and are attached herewith.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/034,431
Filing Date: December 27, 2001
Appellant(s): MCKINNON ET AL.

John R. Witcher, III
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 16, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Prior Art of Record

2002/0143876	Boyer et al.	10-2002
2002/0035605	McDowell et al.	03-2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-8, 11-22, 25-34, 37, and 38 are rejected under 35 U.S.C. 102(e) as being anticipated by Boyer (U.S. 2002/143876).

As per claims 1-8, 11-22, 25-34, 37, and 38, Boyer teaches:

1. A method comprising:

a) receiving state information bearing on presence of a user, wherein receiving occurs at at least one presence detection system (paragraph 0032);

b) creating service logic based on the state information, the service logic created at the at least one presence detection system and configured to instruct an associated presence service to control communications associated with the user based on the presence of the user (0033-0038, 0041); and providing the service logic to the presence service (0032, 0041).

2. The method of claim 1 wherein the presence of the user relates to at least one of the group consisting of physical presence, availability, and status of the user or a device associated with the user (0032).

3. The method of claim 1 wherein the service logic is configured to instruct the presence service to register a first communication device associated with the user to receive communications when the state information is a first state (0036, 0038, 0041).

4. The method of claim 3 wherein the service logic is configured to instruct the presence service to register a second communication device associated with the user to receive communications when the state information is a second state (0041).

5. The method of claim 1 wherein the state information is provided to the associated presence service with the service logic (0170).

6. The method of claim 1 wherein the state information indicates whether a screen saver is active or inactive (0041).

7. The method of claim 1 wherein the state information indicates whether the user is using a device (0032).

8. The method of claim 1 wherein the state information indicates whether a device associated with the user is activated (0032).

11. The method of claim 1 wherein the service logic is active and therefore configured to cause the presence service to immediately react in a manner to control communications associated with the user (0041, 0071-0075).

12. The method of claim 1 wherein the service logic is passive and therefore configured to cause the presence service to react in a manner to control communications associated with the user upon the associated presence service reacting to a request bearing on communications with the user (0031, 0041).

13. The method of claim 1 further comprising executing the service logic at the associated presence service to control communications associated with the user (0041).

14. The method of claim 13 wherein the executing step further comprises controlling the communications associated with the user based on the service logic in response to an application attempting to communicate with the user (0041).

Claims 15-22, 25, and 26; and claims 27-34, 37, and 38 are rejected on the same bases as claims 1-8, 11, and 12 respectively, as the claims in question constitute a system and medium for the implementation of the method of claims 1-8, 11, and 12 respectively.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 9, 10, 23, 24, 35, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boyer in view of McDowell (2002/0035605).

As per claim 9, Boyer teaches the method of claim 1, but does not specifically teach the state information indicating whether the user is physically present in an area. McDowell teaches the use of a GPS system to locate whether a user is physically present in an area (paragraph 0010). It would have been obvious to one of ordinary skill in the art at the time of the invention to include the ability to monitor a user's whereabouts, as taught by McDowell in the system of Boyer. The motivation for doing so lies in the fact that using a GPS system, in addition to the variety of methods to investigate the user's presence would add further diversity to Boyer's invention. Both inventions are from the same field of endeavor, namely the easy communication between users, utilizing a presence detection system.

As per claim 10, Boyer teaches the method of claim 1, but does not specifically teach the state information indicating whether the user is physically proximate to a device. McDowell teaches the use of a GPS system to locate whether a user is physically present in an area, and thus proximate to a device (paragraph 0010). It would have been obvious to one of ordinary skill

in the art at the time of the invention to include the ability to monitor a user's whereabouts, as taught by McDowell in the system of Boyer. The motivation for doing so lies in the fact that using a GPS system, in addition to the variety of methods to investigate the user's presence would add further diversity to Boyer's invention. Both inventions are from the same field of endeavor, namely the easy communication between users, utilizing a presence detection system.

Claims 23, 24, and 35, 36 are rejected on the same bases as claims 9 and 10, as the claims in question constitute a system and medium of implementing the method of claim 9 and 10 respectively.

(10) Response to Argument

Appellant argues that elements of the claimed invention are not taught by the Boyer reference. Examiner respectfully disagrees with this assertion.

Claim 1 reads as follows:

> *A method comprising: receiving state information bearing on presence of a user, wherein receiving occurs at at least one presence detection system; creating service logic based on the state information, the service logic created at the at least one presence detection system and configured to instruct an associated presence service to control communications associated with the user based on the presence of the user; and providing the service logic from the at least one presence detection system to the associated presence service to distribute generation of the service logic.*

Boyer et al., in paragraphs 0032, 0040, 0041, and 0044 discusses the obtaining of user presence information. These teachings constitute the receiving of state information bearing on presence of a user. The indications of user activity and location may begin at the user's computer, for example, and are sent to the User Agent, which constitutes the receiving of the

presence information at a presence detection system, which creates service logic at the presence detection system. The system then enables a human client to communicate with the user through different methods. Through an application, the communication methods are controlled by the user's presence information. For example, if the user is away from his/her desk, and unavailable by computer, the system indicates communication through some other manner. This teaching constitutes the instruction of service logic from the presence system – to the presence service – which controls the communications between the human client and the user. The human client, through the application, may then communicate with the user, based on the user presence information. This constitutes the providing of service logic from the detection system to the presence service, which enables the distribution of service logic generation.

Specifically, Appellant argues that the generation of service logic does not take place at the presence detection system. It is argued that in Boyer, service logic is created at the SPFS, and that the "SPFS collects the presence information and generates the service logic that instructs the SLEE to control the communications associated with the user based on presence," and that the SPFS is not part of the presence detection system.

Examiner respectfully contends that the use of service logic is an inherency in all client-server communication, and indeed, all computer function. As stated in the Office Action, the creation and execution of service logic in a system - to control a certain process in that system - is an inherency, native to any client-server system. Any computer process, in which communication flows a certain way, as a result of some criteria, employs the use of service logic to achieve that end. Service logic serves as the instructions and commands, which enable any computer system to function, and without it, no computer function would ever execute. Service

logic is therefore all-encompassing in all computer function, all client-server communications, and therefore, all functions disclosed in Boyer. This interpretation of the definition of "service logic" is the broadest reasonable interpretation possible to one of ordinary skill in the art. This term is well known by those of ordinary skill in the art, and is further supported by a dictionary definition – "A sequence of processes/functions used to provide a specific service." Therefore, this term is expansive and is interpreted as such.

As a result, in Boyer, the creation of service logic does take place at the system and instructs the service to control communications in the system, and distribution of the service logic takes place to achieve that end, since Boyer discloses the ability to perform the same tangible functions claimed by the Appellant.

However, even if service logic was not a global computer inherency, a point the examiner does not concede, Appellant's arguments are still fallacious. Even if, as Appellant states, service logic is generated only at the SPFS, Boyer still teaches the claimed limitations. In Appellant's interpretation, presence detection takes place by the User Agent. Then, the SPFS collects the presence information and generates the service logic that instructs the SLEE to control the communications associated with the user based on presence. Appellant correctly states that the User Agent is part of the SPFS. Therefore, based on a broad reasonable interpretation, it may be assumed that the User Agent and the SPFS constitute a presence detection system, as claimed. Appellant then claims that the service logic is distributed to an "associated presence service," to cause it to control communications between the human client and the user whose presence is detected. Appellant correctly states that Boyer's SPFS (system) generates the service logic that instructs the SLEE to control communications. In controlling the communications, this service

logic is distributed to the ConnectIcon View, TeamPortal View, etc., which are the applications that provide the interface through which the human client may communicate with the user. Service logic is sent to these applications, which control possible communication methods, based on the presence of the user. As such, these applications constitute the "associated presence service", since they are associated with the user presence, and provide service to the human client – a broad reasonable interpretation. Therefore, even in this hypothetical example, Boyer teaches the invention as claimed.

Further, Appellant submits that there is no motivation to combine the teachings of Boyer and McDowell. Examiner respectfully disagrees, as both inventions attempt to solve a similar problem. Boyer's invention highlights a system to effectively track fellow users and employs a method to best contact these users based on their respective locations. McDowell's invention also employs a similar system to track fellow users to communicate with them effectively, where the use of GPS is a feature. Because Boyer and McDowell seek to solve the same problem, and because the use of GPS would add effectiveness to achieve the goal of Boyer's invention, the combination of the features of the two inventions would have been obvious to one of ordinary skill in the art. The Boyer reference, in the Background and Summary (specifically paragraph 0004), discloses a need to enable immediate and seamless communications, based on the presence of a user. McDowell, in the Background and Summary (specifically paragraph 0013), also discloses an objective to enable instant communications based on user presence. Therefore, given that both inventions seek to solve exactly the same problem, one of ordinary skill in the art would have been motivated to include the teachings of McDowell into the system of Boyer. In response to Appellant's argument that the examiner's conclusion of obviousness is based upon

improper hindsight reasoning, it must be recognized that any judgment of obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But as long as it takes into account only knowledge, which was within the level of ordinary skill in the art at the time of the invention, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Tanim M. Hossain

August 16, 2007

Conferees:

Jason D. Cardone

Rupal D. Dharia

JASON CARDONE
SUPERVISORY PATENT EXAMINER

RUPAL DHARIA
SUPERVISORY PATENT EXAMINER

ELECTRONIC INFORMATION DISCLOSURE STATEMENT

Electronic Version v18
Stylesheet Version v18.0

Title of Invention	DYNAMIC PRESENCE MANAGEMENT

Application Number: 10/034431
Confirmation Number: 1726
First Named Applicant: Steve McKinnon
Attorney Docket Number: 7000-062
Art Unit: 2152
Examiner: David Armand Wiley
Search string: (5771280 or 6584494 or 20020120687 or 20030023681 or 20030052915 or 20030055897).pn.

US Patent Documents

Note: Applicant is not required to submit a paper copy of cited US Patent Documents

init	Cite.No.	Patent No.	Date	Patentee	Kind	Class	Subclass
	1	5771280	1998-06-23	Johnson		379	93.23
	2	6584494	2003-06-24	Mannabe et al.	B1	709	204

US Published Applications

Note: Applicant is not required to submit a paper copy of cited US Published Applications

init	Cite.No.	Pub. No.	Date	Applicant	Kind	Class	Subclass
	1	20020120687	2002-08-29	Diacakis et al.	A1	709	204
	2	20030023681	2003-01-30	Brown et al.	A1	709	204
	3	20030052915	2003-03-20	Brown et al.	A1	345	752
	4	20030055897	2003-03-20	Brown et al.	A1	709	205

Remarks

Note: Remarks are not for responding to an office action.

These references were cited in an office action received in a related application within

the last three months.

Signature

Examiner Name	Date
[signature]	8/16/07

FORM PTO-1449	U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE	ATTY DKT NO. 7000-062	SERIAL NO. 10/034,431
		APPLICANT McKinnon *et al.*	
	INFORMATION DISCLOSURE STATEMENT BY APPLICANT	FILING DATE 12/27/2001	GROUP 2152

U.S. PATENT DOCUMENTS

EXAMINER INITIAL		DOCUMENT NO.	DATE	NAME	CL.	SUBCL.	FILING DATE IF APPROP.
	A	US 2002/0035605 A1	03/21/02	McDowell et al.	709	206	
	B	US 2002/0126701 A1	09/12/02	Requena	370	469	

FOREIGN PATENT DOCUMENTS

		DOCUMENT NO.	DATE	COUNTRY	CL.	SUBCL	TRANSLATION YES	TRANSLATION NO

OTHER DOCUMENTS (Incl. Author, Title, Date, Pertinent pages, etc.)

	C	Eschenburg, Axel, "Wo Laufen Sie Denn? ICQ Haelt Verbindung Zu Bekannten," CT Magazin Fuer Computer Technik, Verlag Heinz Heise GMBH, Hannover, Germany, No. 22, October 26, 1998, pages 92-95, Translation Provided.
	D	Kohda et al., "IMPP: A New Instant Messaging Standard and Its Impact on Internet Business," Fujitsu-Scientific and Technical Journal, Fujitsu Limited, Kawasaki, Japan, vol. 36, no. 2, December 2000, pages 147-153.

EXAMINER	DATE CONSIDERED 8/16/07

EXAMINER: Initial if citation considered, whether or not citation is in conformance with MPEP 609; draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

ELECTRONIC INFORMATION DISCLOSURE STATEMENT

Electronic Version v18
Stylesheet Version v18.0

Title of Invention	DYNAMIC PRESENCE MANAGEMENT

Application Number: 10/034431
Confirmation Number: 1726
First Named Applicant: Steve McKinnon
Attorney Docket Number: 7000-062
Art Unit: 2152
Examiner: David Armand Wiley
Search string: (6658095 or 20030105820 or 20030154293).pn.

US Patent Documents

Note: Applicant is not required to submit a paper copy of cited US Patent Documents

init	Cite.No.	Patent No.	Date	Patentee	Kind	Class	Subclass
	1	6658095	2003-12-02	Yoakum et al	B1	379	93.01

US Published Applications

Note: Applicant is not required to submit a paper copy of cited US Published Applications

init	Cite.No.	Pub. No.	Date	Applicant	Kind	Class	Subclass
	1	20030105820	2003-06-05	Haims et al	A1	709	205
	2	20030154293	2003-08-14	Zmolek	A1	709	228

Signature

Examiner Name	Date
	8/16/07

ELECTRONIC INFORMATION DISCLOSURE STATEMENT

Electronic Version v18
Stylesheet Version v18.0

Title of Invention	DYNAMIC PRESENCE MANAGEMENT

Application Number: 10/034431
Confirmation Number: 1726
First Named Applicant: Steve McKinnon
Attorney Docket Number: 7000-062
Art Unit: 2152
Examiner: David Armand Wiley
Search string: (20020147777 or 20020163572 or 20030073440 or 20030105820 or 20040037271 or 20040044647).pn.

US Published Applications

Note: Applicant is not required to submit a paper copy of cited US Published Applications

init	Cite.No.	Pub. No.	Date	Applicant	Kind	Class	Subclass
DA	1	20020147777	2002-10-10	Hackbarth et al.	A1	709	205
	2	20020163572	2002-11-07	Center, Jr. et al.	A1	348	14.08
	3	20030073440	2003-04-17	Mukherjee et al.	A1	455	435
	4	20030105820	2003-06-05	Haims et al.	A1	709	205
	5	20040037271	2004-02-26	Liscano et al.	A1	370	352
	6	20040044647	2004-03-04	Salmenkaita	A1	707	1

Signature

Examiner Name	Date
[signature]	8/16/07

FORM PTO-1449 U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE	ATTY DKT NO. 7000-062	SERIAL NO. 10/034,431
	APPLICANT McKinnon *et al.*	
INFORMATION DISCLOSURE STATEMENT BY APPLICANT	FILING DATE 12/27/2001	GROUP 2145

U.S. PATENT DOCUMENTS

EXAMINER INITIAL		DOCUMENT NO.	DATE	NAME	CL.	SUBCL.	FILING DATE IF APPROP.

FOREIGN PATENT DOCUMENTS

		DOCUMENT NO.	DATE	COUNTRY	CL.	SUBCL	TRANSLATION	
							YES	NO
FB	A	99/17194	04/08/99	WO	G06F	9/46 17/60	X	

OTHER DOCUMENTS (Incl. Author, Title, Date, Pertinent pages, etc.)

FB	B	Brodsky, Alexander *et al.*, "Resource Management in Agent-based Distributed Environments," Proceedings of the 1999 International Symposium on Kyoto, Japan November 28-30, 1999, pp. 95-108, XP010379697.
	C	Chapin, Steve J. *et al.*, "Resource Management in Legion," Future Generations Computer Systems, Elsevier Science Publishers, Amsterdam, Netherlands, vol. 15, no. 5-6, October 1999, pp. 583-594, XP004176748.
	D	Krauter, Klaus, *et al.*, "A Taxonomy and Survey of Grid Resource Management Systems for Distributed Computing," Software Practice & Experience, John Wiley & Sons Ltd., Chichester, Great Britain, vol. 32, no. 2, February 2, 2002, pp. 135-164, XP001091827.
	E	International Search Report for PCT/IB03/05780 mailed January 27, 2005.

EXAMINER	DATE CONSIDERED 9/16/07

EXAMINER: Initial if citation considered, whether or not citation is in conformance with MPEP 609; draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.